

EXHIBIT 4DATE 2/7/2011HB 374AARP Montana
30 W. 14th Street
Suite 301
Helena, MT 59601T 1-866-295-7278
F 406-441-2230
TTY 1-877-434-7598
www.aarp.org/mt

February 7, 2011

TO: Members of the House Judiciary Committee

FROM: Claudia Clifford, Advocacy Director AARP Montana

RE: Support of HB 374 Revising laws related to financial powers of attorney

AARP Montana strongly supports HB 374 as a significant improvement in our laws concerning financial powers of attorney through the adoption of the Uniform Power of Attorney Act. The financial power of attorney has become a commonly used, inexpensive advanced planning tool that allows a person to delegate to a family member or other party the authority to handle financial matters. The power of attorney promotes autonomy, avoids guardianship, cuts costs, and helps family members and others make decisions on behalf of an incapacitated person.

Unfortunately, the power of attorney has been called "the license to steal". In fact, the **Montana Adult Protective Services reports that the vast majority of elder financial abuse cases involve Power of Attorney abuse.**

HB 374 adopts the protections in the Uniform Power of Attorney Act, identified by AARP, and the American Bar Association as the best way states can address and prevent power of attorney (POA) abuse. The following states have adopted the UPOAA: Colorado, Idaho, Maine, Nevada, New Mexico, Virginia, Wisconsin and the US. Virgin Islands.

How the Act helps. While the Act won't deter all bad actors determined to steal from elders or others, it does set forth clear agent duties and prohibitions that make civil actions and criminal prosecutions more effective.

- It prohibits self-dealing and clearly states the fiduciary responsibilities of the agent who must spend your money in your best interest. (New section 13 and 44.)
- It preserves your estate plan. (New section 13,(2)(f))
- It makes abusive agents liable for restoring stolen property and assets. (New section 16.)
- It makes clear that a power of attorney terminates upon death. (New Section 9.)

The Act helps agents by encouraging third parties to accept a power of attorney. It does this by:

- Providing broad protections for the good faith acceptance or refusal of a POA. (New sections 18 & 19.)
- Recognizing portability of POAs validly created in another state. (New Section 5.)
- Providing for recovery of costs associated with unreasonable refusal of a POA. (New section 19 (3)(b).)

Detection and prosecution of abuse improved with HB 374

- Adult Protective Services (APS) may request disclosure of transactions by the agent. (New section 13 (8).)
- Anyone interested in the person's welfare may petition a court for review of the agent's conduct. (New section 15.)
- If a bank or third party becomes suspicious of financial abuse, they can refuse to honor a POA and report concerns to APS. (Section 19.)
- Remedies are not exclusive – Theft and elder abuse remedies can apply. (New Section 22.)
- Clear statements of duties and prohibitions make civil and criminal prosecutions more effective because state standards are laid out. (Numerous sections.)

These are some of the advantages of HB 374, a bill that goes a long way to protect Montanans who use powers of attorney. AARP urges your support of HB 374.